

**Letter of Findings: 01-20170412  
Indiana Individual Income Tax  
For The Tax Year 2010**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Individual failed to demonstrate that the proposed assessment was incorrect and, therefore, Individual was liable for the assessment.

### **ISSUE**

#### **I. Indiana Individual Income Tax - Imposition.**

**Authority:** IC § 6-8.1-5-1; [IC 6-8.1-5-2](#); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 15-5-7](#).

Taxpayer protests the Department's proposed assessment for the 2010 tax year.

### **STATEMENT OF FACTS**

Taxpayer is an Indiana resident. In February 2011, Taxpayer filed her 2010 Indiana individual income tax return electronically, claiming that she was entitled to a refund of \$764. Taxpayer requested that the refund to be directly deposited into her bank account.

The Indiana Department of Revenue ("Department") processed the 2010 return and refunded Taxpayer by directly depositing the money into Taxpayer's designated bank account in February 2011. In April 2017, the Department, cross-referencing the federal return information provided by the Internal Revenue Service ("IRS"), found that Taxpayer was not entitled to that refund and subsequently assessed Taxpayer for the same amount plus interest and penalty.

Taxpayer timely protested the assessment. An administrative phone hearing was held. At the phone hearing, Taxpayer was allowed additional time to submit additional documentation to support her protest. Taxpayer failed to do so. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2010 based on the federal information available to the Department and documents initially submitted by Taxpayer. Additional facts will be provided as necessary.

#### **I. Indiana Individual Income Tax - Imposition.**

### **DISCUSSION**

Pursuant to the federal cross-reference information, the Department found that Taxpayer previously claimed and received a refund of \$764 in 2011, to which she was not entitled. The Department assessed the same amount, plus interest and penalty.

Taxpayer, to the contrary, argued that she was not liable for the assessment because she was incarcerated from April 2008 through February 2011.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of*

*State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). The issue is whether Taxpayer meets the burden of proof demonstrating that the Department's proposed assessment was incorrect.

In her June 12, 2017, protest letter, Taxpayer stated that "I filed all this paperwork with the IRS in 2012 after they sent notification that due to my 2010 return I may not be eligible for earned income credit." Taxpayer further stated that "[w]hen I opened my bank account in 2011 they told me a woman in Elkhart[,] Indiana was using my social security number. I went through all of the identity theft stuff a[t] that time." To support her protest, Taxpayer submitted paperwork concerning her release from an Indiana county correctional facility in February 2011.

Upon review, however, Taxpayer is mistaken. First, in this instance, Taxpayer did not dispute that she was an Indiana resident, who was required to file her income tax return. Taxpayer's 2010 individual income tax return was timely filed and a refund was deposited into Taxpayer's bank account in 2011. Taxpayer thus presumably received the refund in 2011.

As Taxpayer mentioned in her letter, the IRS in 2012 made a subsequent adjustment on Taxpayer's 2010 income tax filing. Taxpayer failed to timely amend her 2010 Indiana return accordingly. In turn, pursuant to the Indiana law, in the absence of Taxpayer's amended return, the Department is authorized to make the assessment based on the IRS adjustment and the statute of limitations generally does not apply. IC § 6-8.1-5-2; [45 IAC 15-5-7](#). At the phone hearing, Taxpayer was asked to provide a copy of the paperwork concerning the IRS adjustment, but she failed to do. Taxpayer thus failed to show that the Department's assessment is incorrect.

Second, Taxpayer seemingly argued that she was a victim of identity theft. Taxpayer stated that "a woman in Elkhart Indiana was using my social security number. I went through all of the identity theft stuff a[t] that time." Taxpayer was asked to provide copies of official reports which she filed with the government officials. However, she failed to do so.

As discussed earlier, pursuant to the above-mentioned Indiana law, a tax assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. Taxpayer here bears the burden of proving that the assessment is incorrect. Taxpayer simply demonstrated that she was released from an Indiana correction facility in February 2011 but that document alone is insufficient to support her protest. Nonetheless, Taxpayer may request a rehearing within thirty (30) days of the date of this decision in order to present evidence to support her protest.

In short, given the totality of the circumstances, in the absence of verifiable supporting documentation, the Department is not able to agree that Taxpayer met her burden demonstrating that the proposed assessment was wrong.

### FINDING

Taxpayer's protest is respectfully denied. Taxpayer may request a rehearing within thirty (30) days of the date of this decision in order to present evidence to support her protest.

Posted: 11/29/2017 by Legislative Services Agency  
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